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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,412

06/01/2006

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MORRISON & FOERSTER LLP  
12531 HIGH BLUFF DRIVE  
SUITE 100  
SAN DIEGO, CA 92130-2040

EXAMINER

MOORE, SUSANNA

ART UNIT

PAPER NUMBER

1624

MAIL DATE

DELIVERY MODE

09/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,412	<b>Applicant(s)</b> BURNS ET AL.	
	<b>Examiner</b> SUSANNA MOORE	<b>Art Unit</b> 1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7 and 13-18 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see Remarks, filed 6/4/2009, with respect to Office Action mailed 4/3/2009 have been fully considered. This is a Nonfinal Office Action. In summary, claims 1-5, 7, 8 and 13-18 are currently pending and under consideration.

There are 14 claims pending and 14 under consideration. Claims 1-5, 13 and 14 are compound claims. Claim 7 is a composition claim.

### ***Specification***

The objection of the disclosure is **withdrawn** based on the amendments.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Substituted Pyrazines as Kinase Inhibitors.

### ***Claim Objections***

The objection of claim 2 because of the following informalities: an "or" is needed between "aryl" and "hetaryl" in the definition of A is **withdrawn** based on the amendments.

The objection of claim 2 is objected to because of the following informalities: please replace the term "CO<sub>2</sub>R<sup>8</sup>" with "CO<sub>2</sub>R<sup>8</sup>" at the end of the definition of A is **withdrawn** based on the amendments.

The objection of claim 1 because of the following informalities: please remove the phrase, "and pharmaceutically acceptable salts, hydrates, solvates, crystal forms or diastereomers thereof" at the end of claim 1 since it is repeated in lines 3-4 of claim 1 is **withdrawn** based on the amendments.

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Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The rejection of claims 1, 2 and 19 under 35 U.S.C. 112, second paragraph, as being indefinite for the terms “aryl, hetaryl, C<sub>1-4</sub>aryl, C<sub>1-4</sub>hetaryl” in the definition of A is vague is **withdrawn** based on the amendments.

The rejection of claims 1, 7 and 14-16, under 35 U.S.C. 112, second paragraph, as being indefinite for Q and W being defined twice is **withdrawn** based on the amendments.

The rejection of claims 1, 7 and 14-17, under 35 U.S.C. 112, second paragraph, as being indefinite for the definition of Q stating, “trivalent alkylene” is **withdrawn** based on the amendments.

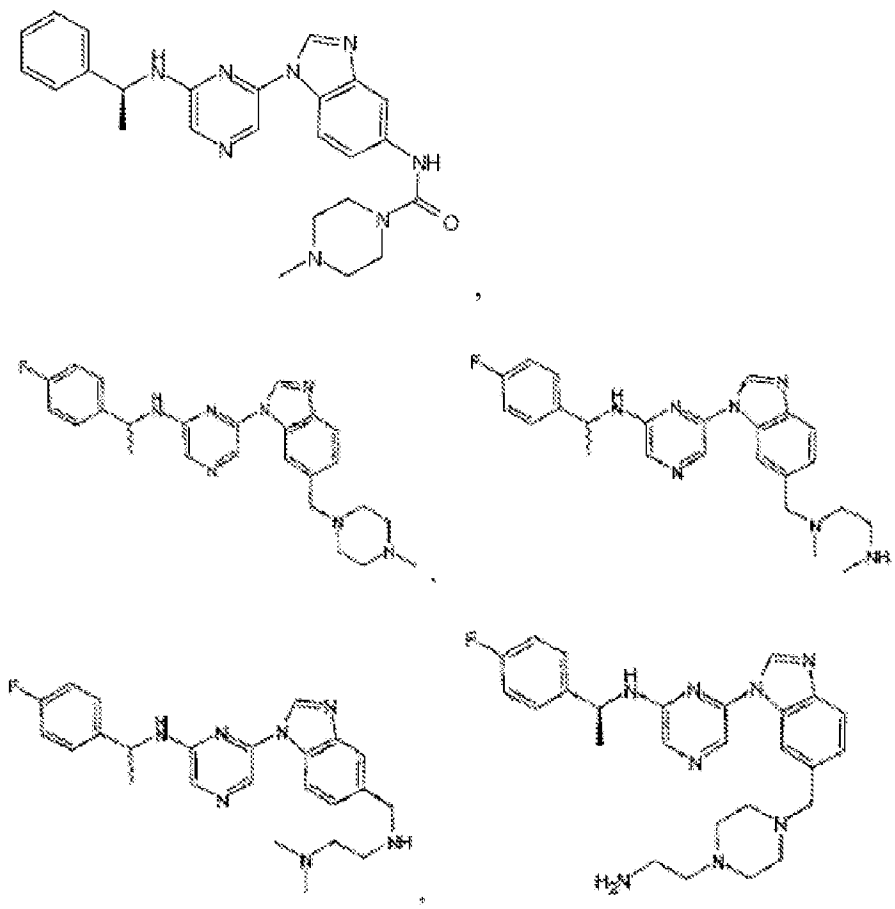
Claims 1, 2, 5, 7 and 13-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

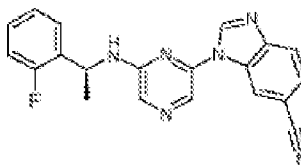
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Regarding claims 1, 2, 7, 13-15; a C<sub>1-6</sub> cycloalkyl is vague. There cannot be a C1 or C2 cycloalkyl, see the R<sup>1</sup> definition in claim 1 and 2. Thus, claims 1, 2, 7, 13-15 are vague.

Regarding claims 1, 2, 7, 13, 16 and 17, the variables, "R<sup>3</sup>, R<sup>4</sup>" and "R<sup>19</sup>, R<sup>20</sup>" are not written in the alternative. Thus, claims 1 and 2 and those claims which depend from claims 1 and 2 that do not rectify the issue, stand rejected under 112, second paragraph.

Claim 1 is vague because the following species are not embraced by claim 1:





Claim 5 recites the limitation " " in said claim. There is insufficient antecedent basis for this limitation in the claim.

The rejection of claims 1, 7 and 14-17 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement for the definition of Q changing from a C<sub>1-4</sub> alkylene to a trivalent alkylene is **withdrawn** based on the amendments.

The rejection of claim 19 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement because claim 19 does not find support in the disclosure is **withdrawn** based on the amendments.

The rejection of claim 3 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement for the addition of the phrase "and pharmaceutically acceptable salts, hydrates, solvates, crystal forms or diastereomers thereof" to claim 3 is **withdrawn** based on the amendments.

The rejection of claims 1-5, 7, 8, 13-17 and 19 under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the compounds of claims 1, 3 or 4 or pharmaceutically acceptable salts of said compound does not reasonably provide enablement for a hydrate, solvate or crystal forms of a compound of claims 1, 3 or 4 is **withdrawn** based on the amendments.

Claim 18 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 18 does not find support in the disclosure. The new genus and the many combinations found within is not found in the Specification. This is a new matter rejection.

***Double Patenting***

Claims 1-5, 7, 8, 13-17 and 19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 and 9-13 of copending Application No. 10585916 is **withdrawn** based on the amendments.

***Allowable Subject Matter***

Claim 3 is free of the art and enabled.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSANNA MOORE whose telephone number is (571)272-9046. The examiner can normally be reached on M-F 8:00-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna Moore/  
Examiner, Art Unit 1624